

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1142 of 2013

IN

Civil Writ Jurisdiction Case No. 10340 of 2005

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Md. Tamanna, S/o Late Md. Hanif, R/O Vill. - Sangi Masjid Road, At and P.O. Phulwari Sharif, P.S. Phulwari Sharif, District – Patna.

.... Petitioner/Appellant.

Versus

1. The State of Bihar.
2. The Finance Commissioner, Government of Bihar, Patna.
3. The Department of Minority Welfare Patna, Old Secretariat, District - Patna through its Secretary.
4. The Secretary, Minority Welfare Department, Old Secretariat, District Patna.
5. The Executive Committee, Bihar Urdu Academy, Patna through its Secretary.
6. The President cum Chief Minister, Executive Committee, Bihar Urdu Academy, Patna.
7. The Working President Cum Minister, Department of Minority Welfare, Executive Committee, Bihar Urdu Academy, Patna.
8. The Secretary, Executive Committee, Bihar Urdu Academy, Ashok Rajpath, Chauhatta, P.S. Peerbahore, Patna.
9. Md. Naseemuddin, S/o Late Md. Zakiuddin, R/o Near Dr. Sadrul Haque, At and P.O. Bahpura Via Bihta, P.S. Bihta, Distt. – Patna.

.... Respondents.

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Appearance :

For the Appellant : M/s Md. Nadim Seraj, Ashhar Mustafa and Shailesh Kumar, Advocates.

For the Academy : Mr. Sadat Ali Khan and Md. Abu Haider, Advocates.

For the State : Mr. Mayank Rukhaiyar, AC to GA-1.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-03-2016

Heard the parties and with their consent, this appeal has been heard for final disposal at this stage itself.

2. The sole-appellant is aggrieved by the judgment and order dated 06.02.2012 passed in C.W.J.C. No.10340 of 2005, whereby allowing part of the writ petition, in so far as petitioner

no.2 is concerned, the appellant, who was writ petitioner no.1, was denied the relief against his disengagement order. Pursuant to our earlier order, a counter affidavit has been filed by the Bihar State Urdu Academy (for the sake of brevity 'Academy') which is kept on record. State has not chosen to file a counter affidavit.

3. The facts of this case are not in dispute. Upon the name of writ petitioner no.1/appellant being sponsored by the Employment Exchange he was engaged by the Academy as a Hindi Steno Typist in the Assistant Grade in the year 1994. Bihar State Urdu Academy is a Society registered under the provisions of the Societies Registration Act, 1860. It was formed by the State Government to promote Urdu Language and Literature. It is an autonomous body governed by its own bye-laws.

4. It appears that originally the bye-laws of the Academy, as framed in the year 1972-73, provided that the Executive Committee thereof would have powers to make appointment, to confirm, to give promotion or to suspend its office staff. This is to be found in bye-laws 14 (c) (ii). The bye-laws do not provide for anything like getting the post sanctioned from the State Government. It is under this provision that the writ petitioner no.1/appellant was appointed. Subsequently, after about

12 years of service, the issue about validity of appointment of several employees of Academy came in question and a High Powered Committee was formed by the State. The High Powered Committee was of the view that as the post was not sanctioned by the State Government, recruitment to the post by the Academy was not in accordance with law and recommended disengagement of this appellant and his like. Accordingly, the Academy issued show cause and then dismissed them. A group of employees came to this Court, and this Court, vide C.W.J.C. No.16537 of 2004 (Md. Azim and others Vs. The State of Bihar and others), on 16.08.2011 held that the reliance as placed by the Academy on Rule-16 of the bye-laws as amended, having been published in 1999, could not have applied to the appointment made prior to that, and, thus set aside the order of dismissal. All those six employees who were otherwise similarly situated have been reinstated consequently. This writ petitioner/appellant also filed a writ petition but the learned Single Judge this time, holding that as he had served only for a period of 12 years and was appointed against unsanctioned post, refused to interfere in the matter. While in case of a co-petitioner, being writ petitioner no.2, the learned Single Judge held that because he has served the Academy

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for 25 years, it shall be arbitrary to terminate his services in the evening of his service life. Accordingly, the dismissal order of petitioner no.2 was set aside and he was directed to be reinstated but the cause of this petitioner/appellant, being petitioner no.1, was dismissed.

5. In appeal before us, learned counsel for the appellant submitted that the so called amended bye-laws, which were allegedly published in the year 1999 are concerned, they do not appear to be genuine and *bona fide* piece of enactment. Who had done it, how it was done and under what authority, he did not know? According to him, what the law exists are the original bye-laws of the year 1972-73. It is to resolve this controversy we have passed a detailed order on 14.03.2016 asking both the State Government and the Academy to bring on record the duly promulgated and registered rules and regulations. The Academy has filed the bye-laws virtually admitting that it is the only bye-laws which is registered with the Registrar of the Society and is available. The State has not taken any position in the matter.

6. We have considered the facts and, in our view, this appeal has to be allowed and the order of the learned Single Judge, in so far as it relates to the appellant, has to be set aside for

two reasons. Firstly, even if the amended bye-laws are held to be there, then it is not in dispute or at least it has been noticed in the earlier case of Md. Azim and others (supra) that it was purported to have been published for the first time in 1999. If that be so, it could not govern the case of this appellant as he was recruited by the Executive Committee in the year 1994 itself. Thus, these amended bye-laws would not be applicable. Secondly, it is these amended bye-laws which alone provide for sanction of post by the State Government because the earlier rule i.e. bye-law 14 (c) (ii) clearly predicates and give power of appointment to the Executive Committee without any reservation. The only reservation was in relation to bye-laws 14 (c) (iii) where terms and conditions of employment had to be approved by the General Council of the Academy. We are not concerned with that part. In those bye-laws, as originally enacted, there is no provision for taking sanction of the State Government for creation of the post. That being the position, even if there be an amended bye-laws of the year 1999 providing for posts to be sanctioned by the State Government, that would not apply to the case of the appellant but the affidavit filed by the Academy denies the very existence of these bye-laws, as published in the year 1999, the situation

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becomes nebulous. It cannot, therefore, be said with certainty that sanction of post was required from the State at any point of time.

7. In fairness to learned counsel for the appellant, we may note other aspects. He has submitted that the budget of the Academy is duly submitted to the State Government and funds received from the State Government. Ever since the petitioner/appellant was appointed there was proper budgetary provision for payment of his remuneration, which was duly sanctioned by the State Government and, accordingly, paid to the petitioner. This continued for over 12 years. Hence, to say that the State was unaware of the petitioner's appointment and would have any say in the matter now, would not be proper. Though, *prima facie*, we agree but it is not necessary for us to decide this issue for even otherwise we have found the action to be unsustainable in law.

8. We, therefore, set aside the judgment and order dated 06.02.2012 passed in C.W.J.C. No.10340 of 2005, in so far as it relates to this appellant, and also set aside the impugned order dated 25.11.2004 of the Academy, as contained in Memo No.880 of 2004 (Annexure-11 to the writ petition) and direct immediate reinstatement of the writ petitioner no.1/appellant. The appellant would be entitled to continuity in service but, so far as wages for

the disengagement period is concerned, the ends of justice would be met to pay him 50% of the back wages like others who were similarly reinstated pursuant to orders of this Court.

9. With the aforesaid observations and directions, this appeal is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/AFR

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